UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

VICTORIA'S BRIDAL BOUTIQUE, LLC, **And** **ANN METTERNICH** **Plaintiffs,** **v.** **MARK ANTHONY RICHARDSON, Prosecuting Attorney For Cole County, Missouri, in his Official and Individual Capacities.** **And** **JOHN DOE, In his or her Official and Individual Capacities Capacity** **And** **POLITICAL SUBDIVISION,** **Defendants.**	)	**Case No.:____________________** **JURY TRIAL DEMANDED**

COMPLAINT

COME NOW Plaintiffs, Victoria's Bridal Boutique, LLC and Ann Metternich, by and through undersigned counsel, Finley D. Gibbs, and for their Complaint against Defendants Mark Richardson, John Doe and Political Subdivision, state to the Court as follows:

PARTIES

1. Victoria's Bridal Boutique, LLC is and was at all times relevant herein a limited liability company in good standing in the State of Missouri, owned by Ann Metternich.

2. Ann Metternich is an individual who was doing business as Victoria's Bridal Boutique, LLC at all times relevant herein, located at 722 Jefferson St., Jefferson City, Cole County, Missouri.

3. Victoria's Bridal Boutique, LLC and Ann Metternich are collectively referred to hereinafter as "Plaintiffs."

4. Defendant Mark Richardson is and was, at all times relevant hereto, a prosecuting attorney for Cole County, Missouri, who was responsible for the prosecution of Plaintiff Ann Metternich and the care and maintenance of Plaintiffs' property that was seized by the Jefferson City, Missouri Police Department (hereinafter "JCPD") as hereafter described.

5. At all times relevant hereto, Defendant Richardson was responsible for upholding the laws of the United States and the State of Missouri.

6. Defendant John Doe is a person unknown to Plaintiffs at this time, but is a person who may have directed Defendant Richardson to perform the actions of which Plaintiffs complain herein, or who may have performed such actions in Defendant Richardson's stead.

7. At all relevant times, Defendant Doe was responsible for upholding the laws of the United States and the State of Missouri.

8. Defendant Political Subdivision is an arm of the government of Cole County or the State of Missouri, unknown to Plaintiffs at this time, and said Defendant Political Subdivision directed the activities of Defendants Richardson and/or Doe and was/is liable for the actions of Defendants Richardson and/or Doe.

9. In all of the actions and omissions and failures described herein, Defendants were acting under color of law.

JURISDICTION AND VENUE

10. This Court has jurisdiction to entertain this complaint under 42 U.S.C. §1983, and the Fifth and Fourteenth Amendments to the United States Constitution.

11. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) and U.S. Dist. Ct. Rules W.D. Mo., Rule 3.1 because a majority of the acts complained of herein occurred within the geographical confines of the Court's jurisdiction.

STATEMENT OF FACTS

12. Plaintiffs were, at all times relevant hereto, doing business in Jefferson City, Missouri.

13. Plaintiffs were in the business of leasing men's tuxedo garments to their customers in return for consideration.

14. On or about some date prior to February 18, 2010, the JCPD received a complaint from Anderson's Formal Wear, Inc. that Ann Metternich had stolen tuxedo garments and that they were being kept at Plaintiffs' place of business.

15. On or about February 18, 2010, JCPD, under the direction and control of Defendants Richardson and/or Doe, obtained a search warrant for Plaintiff's business premises and searched the premises for certain tuxedo garments.

16. On or about February 18, 2010, JCPD, under the direction and control of Defendants Richardson and/or Doe, found and seized from Plaintiffs' business premises approximately sixty (60) tuxedo garments primarily consisting of suit coats and pants (hereafter the "Property"), pursuant to the aforementioned search warrant.

17. At all times relevant hereto, Plaintiffs maintained that they were the rightful owners of the Property so seized by JCPD.

18. On or about April 4, 2011, Defendant Richardson signed a document titled "Request for Disposal of Property/Evidence." Said document (attached hereto as Exhibit "1"

and incorporated as if fully set forth herein) was a JCPD form motion signed and filed by Defendant Richardson, which requested the disposal (by transfer to Anderson's Formal Wear) of the Property removed from Plaintiffs' store.

19. Exhibit "1" contained a positive averment by Defendant Richardson that "there are no known claims against" the Property.

20. Defendant Richardson himself, or at the direction of Defendants Doe and/or Political Subdivision, made such aforementioned statement while fully aware that, for over a year, the ownership of the Property, as identified in Exhibit "1," was hotly contested, and in fact, was the primary issue in the criminal investigation that Defendant Richardson had pursued against Plaintiff Ann Metternich. Defendant Richardson's and/or Doe's only allowable action with regard to said form was to fill it out accurately and notify Plaintiffs that he intended to file it.

21. Even though Defendant Richardson knew that Attorney Dan Hunt ("Attorney Hunt") was legal counsel for Plaintiffs, Defendant Richardson did not notify Attorney Hunt of his actions related to Exhibit "1," nor did he inform Attorney Hunt of the existence of Exhibit "1" or offer him an opportunity to litigate the validity of the statements contained within Exhibit "1."

22. Exhibit "1" also contained other false statements, namely that the "Date of Incident/Arrest" was 3/31/2011 and that the Property described was "Seized/Acquired" on 3/31/2011. In fact, the arrest and seizure of the Property occurred on or about February 18, 2010. Further, Exhibit "1" misspelled Plaintiff Ann Metternich's name as "Ann Matternich."

23. Upon information and belief, Attorney Hunt received Exhibit "1" on or about March 20, 2013, nearly two (2) years after the date upon which Defendant Richardson executed the same, again being April 4, 2011.

24. The Honorable Judge Thomas L. Sodergren of Cole County Circuit Court signed Exhibit "1" April 4, 2011, without any knowledge that, in fact:

(a) ownership of the Property identified therein was disputed, and

(b) Attorney Hunt was unaware of the existence of Exhibit "1," and

(c) Defendant Richardson planned to transfer the Property to Anderson's Formal Wear instead of back to Plaintiffs.

25. JCPD, at some point in time but believed to be on or after April 4, 2011, and under the direction and control of Defendants, gave the seized Property to Anderson's Formal Wear, Inc. without notification to Plaintiffs or Attorney Hunt.

26. On July 19, 2011, unaware that JCPD had already transferred their Property to another party, Plaintiffs filed suit against Anderson's Formal Wear, Inc. in the Circuit Court of Cole County, Missouri seeking a legal declaration of the ownership of the Property so seized by JCPD.

27. After protracted litigation, on November 26, 2014, Plaintiffs obtained a declaratory judgment from the Circuit Court of Cole County, Missouri finding Plaintiffs to be the owners of the seized Property (see *Victoria's Bridal Boutique, LLC v. Anderson's Formal Wear, Inc., Cole County Circuit Court, Case No. 11AC-CC00476*).

28. Because of Defendants' failure to notify Plaintiffs that they had disposed of the Property, by the time Plaintiffs became aware that the Property had been transferred to

Anderson's Formal Wear, Inc., Anderson's was insolvent and could not return or compensate Plaintiffs for said Property.

29. The retail value of the Property is (by Plaintiffs' estimate and by demand of Anderson's Formal Wear, Inc., (*see State v. Ann Metternich, CaseNet 11AC-CR02754, letter from Anderson's Formal Wear- Filed November 15, 2015*) an amount in excess of $12,000.00. The value of the damages to Plaintiffs flowing from the unauthorized seizure of the Property, by virtue of the fact that Plaintiffs were thereafter deprived of the use of the Property in the normal course of Plaintiffs' business, is currently unknown and will likely require expert testimony not currently available to Plaintiffs.

30. Plaintiffs have not made demand upon Defendants for the return of the Property because Plaintiffs are aware that Defendants no longer possess said Property, by virtue of said Property having been delivered to Anderson's Formal Wear as hereinabove described.

COUNT I

VIOLATION OF CIVIL RIGHTS PURSUANT TO 42 U.S.C. §1983

31. Plaintiffs incorporate herein by reference all previous paragraphs as if fully set forth herein.

32. Plaintiffs were, at all times material herein, the lawful owners of the Property identified in Exhibit "1" and therefore, Plaintiffs and each of them had a right to full due process as granted by law before being deprived of permanent possession of said Property.

33. Plaintiffs were subjected to a wrongful taking by Defendants Richardson and/or Doe when Defendant Richardson executed and filed Exhibit "1" knowing that it would thereafter

be signed by a Judge and that the effect would be that he could subsequently dispose of the seized Property by transferring said Property to Anderson's Formal Wear, Inc.

34. Defendants Richardson and/or Doe and/or Political Subdivision acted under color of state law at all times relevant to this Complaint.

35. Plaintiffs bring this cause of action pursuant to United State Code, Title 42, Section 1983 *et. seq*., to redress deprivation by Defendants under color of state law of the rights, privileges, and immunities secured by the statutes and Constitution of the United States of America; specifically, to redress Plaintiffs' right under the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution, to be free from the deprivation of property without fair procedure and just compensation.

36. Defendants knew, or reasonably should have known, of Plaintiffs' ownership claim in the Property. Plaintiffs, their attorneys, employees and agents informed Defendant Richardson of Plaintiffs' claim of ownership in the Property continuously from the moment said Property was seized.

37. Even though Defendants Richardson and/or Doe knew, or reasonably should have known, of Plaintiffs' claim of ownership in the Property, Defendants Richardson and/or Doe deliberately and intentionally disposed of Plaintiffs' Property without giving notice and without legally-required due process.

38. Even though Defendants knew, or reasonably should have known, of Plaintiffs' claim, Defendant Richardson deliberately failed to notify Plaintiffs that he had disposed of Plaintiffs' Property for nearly two (2) years, thereby depriving Plaintiffs of the opportunity to recover said Property from Anderson's Formal Wear.

39. Plaintiffs allege that the actions and omissions and failures set out herein involved the individual actions and omissions and failures of Defendants Richardson, Doe and/or Political Subdivision, and each of them and all of them, all in violation of Plaintiffs' constitutional rights.

40. The actions and omissions and failures of Defendants herein described constituted a violation of Plaintiffs' Fifth and Fourteenth Amendment rights to Due Process and to not be deprived of property without fair procedure and just compensation.

41. Defendants' actions were perpetrated knowingly, willfully and with malicious intent to injure Plaintiffs, and were in conscious disregard for Plaintiffs' constitutional rights.

42. As a direct and proximate result of Defendants' actions and inactions, Plaintiffs have been forever deprived of the Property so seized by Defendants. Said deprivation of Property created consequential damages in addition to the value of the seized Property, as Plaintiffs were unable to use said Property for its intended use to create revenues for Plaintiffs' business.

43. Defendants acted maliciously and oppressively, in willful, reckless and conscious disregard for Plaintiffs' constitutional rights, with the sole intent to inflict substantial injury and harm through intentional deliberate indifference to Plaintiffs' claims of ownership, thereby entitling Plaintiffs to punitive damages.

44. Defendants Richardson and/or Doe are not entitled to qualified or official immunity for their official acts because their conduct violated clearly-established statutory and constitutional rights of which a reasonable person would have known, specifically the clearly-established right not to have one's personal property unnecessarily or illegally destroyed or taken.

45. Defendants Richardson and/or Doe are not entitled to qualified or official immunity for their acts described herein, because their actions breached statutes and regulations, including but not limited to, RSMo. §542.301. The actions taken by Defendants Richardson and/or Doe were ministerial in nature in that:

a. The actions of failing to provide notice to Plaintiffs of the intended Property transfer didn't require employment of Defendants Richardson's and/or Doe's exercise of official authority or discretion;

b. Filling out the JCPD Request for Disposal of Property/Evidence form accurately didn't require employment of Defendants Richardson's and/or Doe's exercise of official authority or discretion;

c. Signing the aforementioned form with the inaccurate allegation that "there are no known claims against it" (referring to the Property identified herein) didn't require employment of Defendants Richardson's and/or Doe's exercise of official authority or discretion;

d. Failing to notify Plaintiffs' counsel of the transfer of Plaintiffs' Property for nearly two (2) years , which damaged/destroyed Plaintiffs' ability to recover said Property didn't require employment of Defendants Richardson's and/or Doe's exercise of official authority or discretion.

46. Defendant Political Subdivision may be sued for damages under Section 537.610.1 of the Revised Statutes of Missouri up to the amount of any insurance maintained by Defendant Political Subdivision.

47. Upon information and belief, Defendant Political Subdivision maintains insurance for itself and its employees for the claims asserted herein and therefore has waived sovereign immunity to the extent of such insurance coverage.

48. Plaintiffs are entitled to an order of reasonable attorney's fees necessarily incurred in this Action.

WHEREFORE, Plaintiffs pray for judgment on Count I against Defendants and each of them, jointly and severally, in an amount that is fair and reasonable for their damages, together with interest, costs, punitive damages (as against Defendants Richardson and Doe only), attorney's fees, and for such other and further relief as the Court deems just and proper in the premises.

Respectfully submitted,

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